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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 431

PENN GENERAL CASUALTY COMPANY,
PETITIONER,

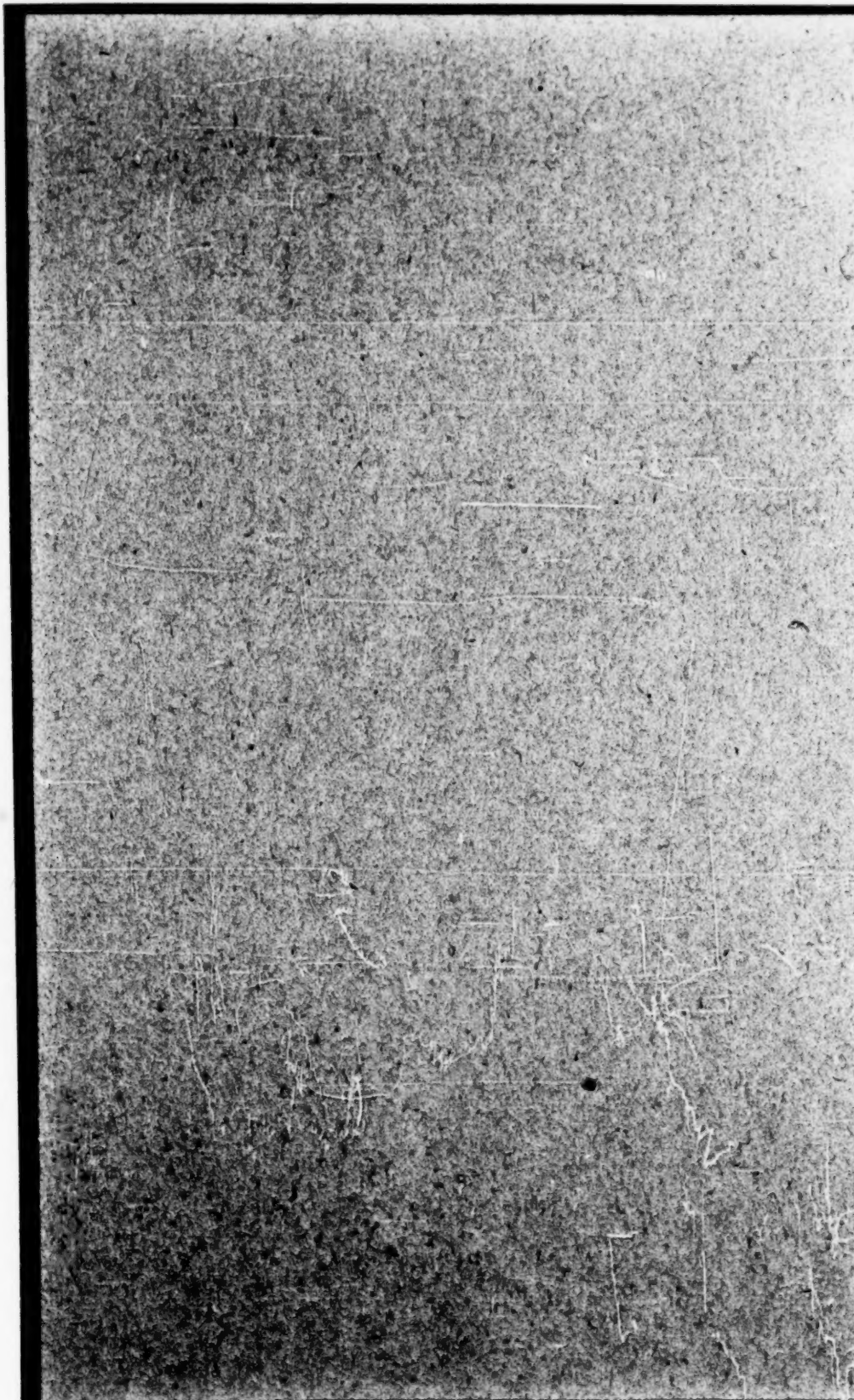
vs.

COMMONWEALTH OF PENNSYLVANIA, EX REL.
WM. A. SCHNADER, ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED SEPTEMBER 29, 1934.

CERTIORARI GRANTED OCTOBER 22, 1934.



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 22, 1934.

[fol. 1] DOCKET ENTRIES

Among the records and proceedings of the Supreme Court of Pennsylvania, sitting in and for the Middle District, before the Honorable Robert S. Frazer, LL. D., Chief Justice, and his Associate Justices, at Harrisburg, beginning on the 21st Monday of the year 1934, it is *contained* as follows to May Term, 1934:

[fol. 2] No. 28, May Term, 1934

COMMONWEALTH OF PENNSYLVANIA ex Rel. WILLIAM A. SCHNADER, Attorney General,

vs.

PENN GENERAL CASUALTY COMPANY, Appellant

Appeal of Defendant from the Order and Decree of the Court of Common Pleas of Dauphin County

No. 343, Commonwealth Docket, 1933

Mar. 16, 1934.—Appeal and affidavit filed.
Eo die exit writ rtble. 21st Monday of the year 1934.
Mar. 22, 1934.—Notice of Appeal, etc., filed.
Apr. 4, 1934.—Petition to advance filed.
Apr. 5, 1934.—Assignments of error filed.

And now, to wit, this 5 day of April, A. D. 1934, upon consideration of the foregoing petition, the above-entitled appeal is transferred from the Middle District and argument of the same is hereby advanced to Eastern District during week of April 23, 1934.

Per Curiam: F.

And now, April 6, 1934, this case is hereby advanced to the Eastern District for argument during week of April 23, 1934 in accordance with above order.

Apr. 17, 1934.—Record filed.
Apr. 23, 1934.—Argued at Philadelphia.
Jun. 30, 1934.—Decree affirmed at appellant's cost.
Per Schaffer, J.

Jul. 10, 1934.—Motion for re-argument filed.

Record.

AMONG THE RECORDS AND PROCEEDINGS enrolled in the Court of Common Pleas in and for the County of Dauphin in the Commonwealth of Pennsylvania, to No. 343 Commonwealth Docket, 1934, is contained the following:

COPY OF COMMONWEALTH DOCKET ENTRY.

COMMONWEALTH OF PENNSYLVANIA, EX REL. WM. A. SCHNADER, ATTORNEY GENERAL,
v.
PENN GENERAL CASUALTY COMPANY.

Suggestion.

Dec. 8, 1933, on suggestion filed Rule granted on Defendant to show cause why the Insurance Commissioner of Pennsylvania should not liquidate its business.

Retb'le Dec. 18, 1933 at 10 o'clock A. M.

Dec. 11, 1933, Sheriff of Philadelphia County served Rule on J. V. Gosline, Vice-President of Defendant Company.

Dec. 14, 1933, Restraining order filed; same day it is ordered that the Defendant Company, its officers, agents, employees and servants are not only enjoined from the transaction of any business and from disposing of its property until further order of Court and also they are restrained and enjoined from surrendering possession or delivering or turning over any books, papers, Dockets or any assets whatsoever of the Defendant Company to any person other

than the Insurance Commissioner of Pennsylvania, his Deputies or agents.

Dec. 18, 1933, Answer of Defendant to suggestion filed with service of same accepted by Geo. W. Keitel, Dep. Attorney General.

Jan. 17, 1934, on motion filed it is ordered, adjudged and decreed that the restraining order entered as of Dec. 14, 1933 is hereby modified to the extent that the Defendant Company, its officers, agents, employees and servants are authorized to pay normal current operating expenses including Attorney fees, the restraining order in all other respects to be and remain in full force and effect. See file.

Feb. 27, 1934, Testimony filed.

Mar. 14, 1934, on petition filed it is ordered and decreed that Charles H. Graff, acting Insurance Commissioner, is directed to take possession of the business and property of the Defendant Company and liquidate the business, all persons having claims shall file proof with the Commissioner, not later than October 1, 1934.

Mar. 14, 1934, Defendant's Exceptions to order and decree and exception is sealed.

Mar. 16, 1934, Certiorari sur appeal #28 May Term, 1934, to Supreme Court received and filed.

Mar. 16, 1934, on petition filed the Court grants that the appeal taken may act as a supersedeas upon the filing of an approved Bond in the sum of ($1000.00).

Mar. 17, 1934, Approved Bond on appeal filed.

Mar. 19, 1934, Opinion filed.

Apr. 4, 1934. Statement of Facts. See file.

Apr. 4, 1934. Certificate of Amount in Controversy. See file.

STATEMENT OF THE CASE.

IN THE COURT OF COMMON PLEAS,
OF DAUPHIN COUNTY.

No. 343. Commonwealth Docket 1933.

Commonwealth of Pennsylvania, ex rel. William A. Schnader, Attorney General.

v.

Penn General Casualty Company.

It is agreed between the attorneys for the plaintiff and the defendant that all of the facts necessary to a determination of the question involved in the appeal of this case are as follows:

1. The defendant, Penn General Casualty Company, is a corporation organized under the provisions of the Act approved May 17, 1921, P. L. 682, providing for the incorporation of insurance companies. Said defendant was chartered on September 26, 1923, for the purpose of conducting a general casualty insurance business, and thereafter conducted said business in the Commonwealth of Pennsylvania and elsewhere according to the laws of the Commonwealth of Pennsylvania and the regulations made by the Insurance Commissioner of the Commonwealth of Pennsylvania.

2. On September 14, 1933, a hearing was held before the Insurance Commissioner at Harrisburg, pursuant to a citation by the Commissioner to the officers and directors of the defendant following the

receipt by the Commissioner of information to the effect that the assets of the defendant had been seriously depleted. At said hearing, C. B. Love, then President of the defendant, was ordered to return to the defendant all assets improperly removed and illegally invested by him.

3. On October 4, 1933, as a result of an examination of the defendant's affairs, the Insurance Commissioner summoned the officers and directors of the defendant to a formal hearing before the Attorney General to whom the Insurance Commissioner had communicated the facts concerning the unsafe and unsound condition of the defendant as disclosed by said examination. Said hearing was held on October 14, 1933, and thereafter, until December 8, 1933, the Insurance Commissioner conducted negotiations with stockholders of the company holding approximately 95 per cent. (95%) of the stock of the defendant, acting for themselves as individuals, looking to the financial rehabilitation of the defendant by said stockholders, and during said period the officers and directors of the defendant from time to time met with the Insurance Commissioner to assist wherever possible in saving the company.

4. On November 17, 1933, while such negotiations were pending, one Samuel Lando filed a bill in equity in the United States District Court for the Eastern District of Pennsylvania (for convenience, hereinafter referred to as "Federal Court"), to No. 7971, of September Term, 1933. Upon the filing of said bill, subpœna was issued and duly served upon the defendant on November 22, 1933.

The said bill alleges that the said Samuel Lando is a stockholder of the defendant company, and that he is a resident of the State of West Virginia. It is

also alleged that the amount involved in said suit is in excess of $3000.00, exclusive of interest and costs. The said Samuel Lando further alleges in said bill that certain officers of the defendant misappropriated and converted cash in the amount of $17,500.00, and that said officers withdrew cash and various securities, which latter were legal and proper investments, of a value of approximately $190,000.00 from the assets of the company, and illegally reinvested same in illegal and worthless securities, and that by reason of the said matters the capital, reserve, and surplus of the defendant have become so depleted that it is insolvent and in an unsafe and unsound condition to continue business.

Said bill prays (1) for the appointment of receivers to take charge and manage the property of the defendant; (2) that the receivers be authorized generally to take into their possession all assets of the defendant, and to institute all litigation necessary to collect assets of the company, as well as to defend all pending litigation against it; (3) that all officers and all other persons be required to deliver to the receivers all assets, books, and records of the company; (4) that the Court marshal the assets of the defendant, and ascertain the respective liens and priorities existing against the property of the defendant corporation, and the rights, liens, and equities of its creditors, stockholders, or other claimants; (5) that all persons generally be restrained from selling, transferring, or disposing of any property of the defendant or from intermeddling with its property and affairs; (6) that the receivers proceed with the care and management of the property until the further order of the Court; and (7) that the officers of the defendant be temporarily restrained from disposing of any of its assets otherwise than in the usual course of business until hearing.

5. On December 1, 1933, an application made to the Federal Court for a restraining order as prayed for in said bill was continued, sine die.

6. On December 8, 1933, the Attorney General of the Commonwealth of Pennsylvania filed a suggestion in the Court of Common Pleas of Dauphin County to No. 343 of Commonwealth Docket 1933, alleging that an examination of the affairs of the defendant company, as of July 31, 1933, disclosed that the defendant was in an unsafe and unsound condition, with the result that further transaction of business would be detrimental and hazardous to its policyholders, creditors, and the public. Said examination also disclosed "that certain officers of defendant company have dissipated portions of its assets by investing them in securities of doubtful value and that are not legal investments for the capital and reserves of insurance companies. Furthermore, such officers have appropriated to their own use other assets of defendant company and have otherwise conducted the affairs of defendant company in such manner as to render its condition such that its further transaction of business will be hazardous to its policyholders, or to its creditors or to the public." It is also alleged in said suggestion that the Insurance Commissioner ordered the officers who committed such illegal acts and made such illegal investments to make good the losses sustained by defendant company by reason thereof, but said officers have failed so to do, as a result of which there exists an impairment of defendant company's capital.

Said suggestion prays that the Court of Common Pleas of Dauphin County (for convenience, hereinafter referred to as "Common Pleas Court") grant an order on the defendant to show cause why its business should not be closed, its charter vacated, its assets taken into the possession of the Insurance Commis-

sioner, and that an order be entered liquidating the company under the direction of the Insurance Commissioner. Said suggestion also prayed for a preliminary injunction enjoining the defendant from transacting business and disposing of its assets until further order of the Court.

7. On December 8, 1933, the Common Pleas Court entered an order to show cause on the defendant, as prayed for in said suggestion; returnable December 18, 1933. Said order to show cause enjoined the defendant "from the transacting of business and from disposing of its property until further order of this Court."

8. On December 11, 1933, said suggestion and order to show cause were duly served upon the defendant.

9. On December 14, 1933, the defendant filed an answer to the said suit instituted by Samuel Lando in the Federal Court denying that the plaintiff in said suit was a resident of Wheeling, West Virginia, and denying that he was the registered owner of four (4) shares of stock, as alleged. The answer substantially admitted the allegations as to the alleged withdrawal of assets and the illegal investment as alleged. The answer denied insolvency, and averred that the defendant was in position to continue the conduct of its business, and meet its obligations as they matured. It was denied that the present management was improper, as the offending parties no longer had control of the affairs of the defendant company. The answer further alleged the filing of the suggestion by the Attorney General, and the pendency of the proceedings thereunder.

10. On December 14, 1933, the Common Pleas Court issued a further restraining order against the defendant, which is as follows:

"And Now, to wit, this 14 day of December, A. D. 1933, on application of William A. Schnader, Attorney General of the Commonwealth, rule having been granted and served upon the above named defendant, returnable Monday, December 18, A. D. 1933, and upon filing of the suggestion under which said rule was granted, and upon further consideration thereof,

"It is hereby ordered that Penn General Casualty Company, its officers, agents, employes and servants are not only enjoined from the transaction of business and from disposing of its property until further order of this Court, but they and each of them are hereby restrained and enjoined from surrendering possession of, delivering or turning over any of the books, papers, checks, records, documents or any assets whatsoever of said Penn General Casualty Company to any person or persons other than the Insurance Commissioner of the Commonwealth of Pennsylvania, his deputies, agents or representatives, or such other person or persons as may be designated by this Court;

"And it is further ordered that pending the hearing on the suggestion filed, any and all persons whatsoever, other than the Insurance Commissioner of the Commonwealth of Pennsylvania, his deputies, agents or representatives, are hereby restrained and enjoined from in any manner taking possession of or custody over any of the books, papers, checks, records, documents or assets of the said defendant, Penn General Casualty Company, without authority and direction of this Court.

By The Court,
Frank B. Wickersham,
A. L. J."

On December 15, 1933, said restraining order was duly served on the defendant.

11. On December 15, 1933, the Federal Court, on the application of Samuel Lando, issued a restraining order, which is as follows:

"And Now, to wit, 15th December, A. D., 1933, this matter having come on to be heard on motion of the Complainant for a restraining order, and it appearing to the Court that the Bill in this case was filed November 17, 1933 and previous application for restraining order continued at the request of all parties in interest, including the Deputy Attorney General of the State of Pennsylvania, for the submission of a possible plan of reorganization, and it further appearing that without notice to counsel for the Complainant, on December 8, 1933, the Attorney General of the State of Pennsylvania filed a Petition in the Dauphin County Court of said State upon which was granted an Order on the Defendant to show cause why it should not be taken in possession of the Insurance Commissioner of the State of Pennsylvania, its affairs liquidated and charter rights forfeited and ousted, which rule is returnable the 18th day of December, 1933;

"It Is Hereby Ordered and Decreed: That the defendant corporation and each and every of its officers and all persons in possession of its books, papers, records and assets are hereby restrained and enjoined from permitting any one to receive or take possession thereof. All said persons are further ordered to hold and maintain such possession until further order of this Court or until proceedings before it have been determined, and all persons are hereby enjoined from interfering in any way with the present possession of the books, papers, records and assets, and business of the Defendant.

By The Court:

Welsh, *J.*"

Said restraining order was duly served on the defendant on December 15, 1933, subsequent to the service of the order of the Common Pleas Court.

12. On December 18, 1933, the defendant filed an answer to the suggestion of the Attorney General denying that the report of the Insurance Commissioner showed that the capital of the company was impaired, and denying that the transaction of further business would be detrimental or hazardous. Said answer also avers the pendency of the aforesaid suit of Samuel Lando against the defendant in the Federal court.

13. On January 17, 1934, hearing was held in the Common Pleas Court, and testimony taken in support of the suggestion filed by the Attorney General, which testimony sustained the allegations of said suggestion.

14. On March 14, 1934, a final decree was entered by the Common Pleas Court appointing Charles H. Graff, Acting Insurance Commissioner, as liquidator, to take possession of the business and property of the defendant and to liquidate the same.

15. On March 15, 1934, said decree was duly served on the defendant and demand made upon it by the said liquidator, through his agents, to surrender its property in conformity with the decree of the Common Pleas Court. The defendant refused to comply with said demand, in view of the restraining order of the Federal court.

16. No receivers have been appointed by the Federal Court in the suit of Lando against the defendant, nor has any final hearing been held on the bill and answer.

17. The relief sought in the above-mentioned suits pending in the Common Pleas Court and the Federal Court is that of the winding up and liquidation of the assets of the defendant company.

18. The question to be determined in this appeal is whether the Common Pleas Court, in view of the prior pendency of the said suit of Lando in the Federal court, had jurisdiction to enter the decree from which this appeal is taken.

HAROLD D. SAYLOR,
Deputy Attorney General, for Wm. A. Schnäder, Attorney General.
PAUL G. SMITH,
Attorney for Defendant.

First Assignment of Error

ORDER AND DECREE.

AND NOW, 14th March, 1934, it appearing to the Court that the Attorney General of the Commonwealth of Pennsylvania, at the relation of the Insurance Commissioner of the Commonwealth of Pennsylvania, has filed herein a suggestion, dated November 21, 1933, praying for a rule upon defendant, Penn General Casualty Company, to show cause why the Insurance Commissioner of the Commonwealth of Pennsylvania should not take possession of its property and order the dissolution of the said company and order the liquidation of its business by the Insurance Commissioner and grant to him and to the policyholders and creditors of said company such other and further relief as in the premises may be just and equitable, and it appearing that return of service on defendant of the rule to show cause and a copy of the suggestion and order herein filed has been made, and that defendant

has appeared by counsel and has filed an answer to the said suggestion, and it further appearing to the Court, after hearing, that said Penn General Casualty Company is in such a condition that its further transaction of business will be hazardous to its policyholders, its creditors and the public:

It is hereby ordered, adjudged and decreed that the said Penn General Casualty Company, a corporation chartered and existing under the laws of this Commonwealth, be and the same is hereby dissolved, its charter vacated and its corporate existence ended; that Charles H. Graff, Acting Insurance Commissioner of the Commonwealth of Pennsylvania as liquidator be and he is hereby directed to take possession of the business and property of the defendant, Penn General Casualty Company, and liquidate the affairs thereof in accordance with the provisions of the Act of the General Assembly of May 17, 1921, P. L. 789; that all parties having claims against the said company shall file proof thereof with the Insurance Commissioner not later than October 1, 1934, or they shall thereafter be barred as claimants against any fund in the hands of said Insurance Commissioner, who is hereby ordered to give reasonable notice to all known parties having claims against said defendant.

It is hereby further ordered that this order shall take effect upon its entry in the office of the Prothonotary.

By THE COURT:

(Sgd.) WATSON R. DAVISON,
President Judge, Thirty-ninth Judicial District, Specially Presiding.

First Assignment of Error

DEFENDANT'S EXCEPTION TO ORDER AND DECREE.

And Now, March 14, 1934, counsel for the defendants hereby excepts to the order and decree this day entered in the above case and, at the defendant's request, an exception is sealed thereto.

By THE COURT:

Frank B. Wickersham,
A. L. J.

OPINION

Sur Suggestion to Show Cause Why the Defendant Company Should Not Be Taken Into Possession by the Insurance Commissioner.

Per Curiam:

The Penn General Casualty Company is a corporation of the Commonwealth of Pennsylvania, organized and created under the provisions of the Act of Assembly, approved May 17, 1921, P. L. 682, providing for the incorporation and regulation of insurance companies, it having been chartered on September 26, 1923, for the purpose of conducting a general casualty insurance business. It commenced the transaction of casualty insurance business within this Commonwealth on December 1, 1923, and has continued in such business to this time, except as restrained in the orders of court hereinafter referred to, its principal office being located at No. 242 South Thirteenth Street in Philadelphia, Pa.

On the 8th day of December, 1933, a suggestion was filed by the Attorney General of the Commonwealth in this court in which it was alleged that an investigation

and examination of the company by the Insurance Commissioner of the State disclosed that it is in an unsafe and unsound condition and that the further transaction of business by the company would be detrimental to its policy holders, creditors, and the public; and, further, that certain officers of the company had dissipated portions of the assets by investing in securities of doubtful value which were not legal investments for the capital and reserves of insurance companies, and, also, that such officers have appropriated to their own use assets of the company, and have otherwise conducted its affairs as to render its condition such that its further transaction of business will be hazardous to its policy holders, or its creditors or the public. Said suggestion also alleged that at a hearing held in the office of the Insurance Commissioner on October 14, 1933, it was established that the further transaction of business by said defendant corporation would be hazardous to its policy holders, creditors, and the public. The Attorney General, therefore, applied to this court, "for an order directing the said Penn General Casualty Company to show cause why its business should not be closed and the Insurance Commissioner should not take possession of its property and its charter vacated, and for an injunction restraining Penn General Casualty Company from the transaction of any business or the disposition of its property until further order of this court, and after a full hearing by said court, to order liquidation of the business and affairs of the said defendant corporation to be made by and under the direction of the said Insurance Commissioner, and for such other relief as the nature of the case and the interests of the policyholders of the defendant corporation, its creditors and the public may require."

On December 8, 1933, this court made the following order on such suggestion:

"And now, to wit, Dec. 8, 1933, upon consideration of the foregoing suggestion and upon motion of William A. Schnader, Attorney General, a rule is granted upon said Penn General Casualty Company, returnable December 18, 1933, at 10 o'clock A. M., to show cause why its business should not be closed and the Insurance Commissioner of Pennsylvania should not take possession of its property, and further, why the court should not order the liquidation of the business of said corporation to be by and under the direction of the said Insurance Commissioner and the dissolution of the corporation, and grant such other relief as the nature of the case and the interests of its members, policyholders, creditors and the public may require, and said Penn General Casualty Company is hereby enjoined from the transaction of business and from disposing of its property until further order of this court."

To this rule so granted an answer was filed by said defendant company denying that said company was in an unsafe and unsound condition, but averring that the report of the examination made by the Insurance Commissioner shows that the company is solvent, able to pay its creditors in the usual course of business, and that its capital is not impaired and that there is a surplus of assets over and above its liabilities, including its capital stock, and denying that the further transaction of business by the defendant would be detrimental or hazardous to its policy holders, creditors or the public. Said answer also informed this court that on or about November 18, 1933, a bill in equity was filed by Samuel Lando against the defendant company in the United States District Court for the Eastern District of Pennsylvania, No. 7971, September Term, 1933, complaining of the matters set forth in the present suggestion and praying for the appointment of a receiver, and that an answer had been filed by the defendant to

that bill, and that Judge Welsh of that court had on December 15, 1933, filed a restraining order. The defendant company for said reasons prayed for the dismissal of the present rule. The order of said United States District Court is as follows:

> "It is hereby ordered and decreed: That the Defendant corporation and each and every of its officers and all persons in possession of its books, papers, records and assets are hereby restrained and enjoined from permitting any one to receive or take possession thereof. All said persons are further ordered to hold and maintain such possession until further order of this court or until proceedings before it have been determined, and all persons are hereby enjoined from interfering in any way with the present possession of the books, papers, records and assets, and business of the defendant."

On December 14, 1933, an order of this court was filed as follows:

> "It is hereby ordered that Penn General Casualty Company, its officers, agents, employes and servants are not only enjoined from the transaction of business and from disposing of its property until further order of this court, but they and each of them are hereby restrained and enjoined from surrendering possession of, delivering or turning over any of the books, papers, checks, records, documents or any assets whatsoever of said Penn General Casualty Company to any person or persons other than the Insurance Commissioner of the Commonwealth of Pennsylvania, his deputies, agents or representatives, or such other person or persons as may be designated by this court;
>
> "And it is further ordered that pending the hearing on the suggestion filed, any and all persons whatsoever, other than the Insurance Commissioner of the Commonwealth of Pennsylvania, his deputies, agents, or representatives, are hereby

restrained and enjoined from in any manner taking possession of or custody over any of the books, papers, checks, records, documents or assets of the said defendant, Penn General Casualty Company, without authority and direction of this court."

This order of the court was modified on January 17, 1934, to the extent that the Penn General Casualty Company, its officers, agents, employees, and servants, were authorized to pay normal current operating expenses including attorney fees.

On January 17, 1934, a hearing was held before this Court and evidence taken on said rule.

This proceeding is instituted by the Attorney General by virtue of the Act of May 17, 1921, P. L. 682, Section 502, which provides as follows in so far as it applies to the present matter: "Whenever any domestic insurance company, association, exchange, society, or order, including all corporations, associations, societies, and orders which are subject to examination by the Insurance Commissioner or which are doing, or attempting to do, or representing that they are doing the business of insurance in this Commonwealth, or which are in process of organization intending to do such business therein—(a) is insolvent, or . . . (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public, . . . the Insurance Commissioner shall communicate the facts to the Attorney General, who shall, after hearing, apply to the court of common pleas of Dauphin County, . . . for an order directing such company, association, exchange, society, or order to show cause why its business should not be closed, and the Insurance Commissioner should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the inter-

ests of its policyholders, creditors, stockholders, or the public may require."

Said Act also provides in Section 505 and in Section 506, in part, as follows:

> "On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such company, association, exchange, society or order from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing before the court or before an examiner appointed by the court, the court shall either deny the application or direct the Insurance Commissioner forthwith to take possession of the property and conduct the business of such company, association, exchange, society or order."

> "If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such company, association, exchange, society, or order, such liquidation shall be made by and under the direction of the Insurance Commissioner, who shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company, association, exchange, society, or order as of the date of the order so directing him to liquidate."

The question, therefore, now before this court is whether the evidence taken before us has proven that the defendant company is (a) insolvent or (e) is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policy holders, or to its creditors, or to the public. If either of these things are found to exist, the rule must be made absolute; if none of them, it must be discharged.

From the evidence it is certain that the affairs of the defendant company have been grossly mismanaged

and its assets badly invested and some of them used for private purposes by certain officer or officers of the same, and it is shown without a doubt that by reason of these acts it is insolvent, or so near insolvency that it is in the condition contemplated in paragraph (e) of Section 506 of that Act, and we are fully satisfied that the relief prayed for should be granted and the Insurance Commissioner placed in possession of the property of the company.

An examination made of the company for the Insurance Department by Earl E. Moyer, Chief Casualty Examiner as of July 31, 1933, and filed with the department as completed in a report dated December 13, 1933. That report shows under head of "Remarks":

> "In conclusion, this examination discloses that as of July 31, 1933, the Penn General Casualty Company of Philadelphia, Penna., possessed, on a market value basis, Total Admitted Assets of $915,581.08, while Total Liabilities, including Capital of $250,000.00, amount to $933,456.32, resulting in a deficit of $17,875.24, however, excluding the liability for paid up capital a surplus as regards policyholders of $232,124.76 is established.
>
> "In addition to the foregoing the Department has knowledge of a disbursement made under date of August 10, 1933 to Mr. C. B. Love, President of the Company, in the amount of $17,500.00, and that to date said amount has not been accounted for. This transaction, of course, occurred subsequent to the date of the financial statement included in this report, but if considered, the deficit would be increased to $35,375.24, and the surplus as regards policyholders would be reduced to $214,624.76."

In addition to that, Mr. Moyer testified that since that report he had learned that the note of A. S. Nye for $35,000.00, with collateral of a par value of $50,000.00, and which had been valued at $20,000.00 in

said assets of said report, had been rehypothecated and there is a possibility that this collateral was absolutely worthless, and if so the Nye note would have no value whatever, and this would add another $20,000.00 to the deficit of the company, and make a deficit of some $55,000.00, and then, the capital would be impaired to the extent of twenty per cent.

Included in the assets as set out in said report and as testified to before the court is an item of $128,976.17, referred to in the evidence as agents' balances representing premiums not more than ninety days old, and in the report as "On policies or renewals effective on or after May 1 of current year". It is testified to by Mr. Moyer that these balances are hard to collect and of doubtful value.

The evidence showed that the president of the Company, C. B. Love, had invested certain of the money of the defendant company without authority of the Board of Directors. One of such investments was $225,000.00 in the capital stock of the General International Corporation, which corporation was controlled by himself, and this amount is considered as lost in the said report filed. In addition there was a withdrawal of $17,500.00 from the funds of the company by him. There was an investment of $65,000.00 in ten notes of the Underwriters' Finance Corporation, which it is testified to have little, or no value; and there was the Nye note above referred to. It is true that Love has by resolution of the board of directors been suspended as president of the company, but the harm which has been done is reflected in the financial condition of the company and bears on the ability of that company to continue to operate with safety to its creditors and others.

We find that clearly the defendant company is insolvent when all its liabilities are considered, including the capital stock of the company which must be considered in determining the solvency of a corporation.

In addition to that we are of the opinion that, if we do not consider the capital stock liability and, therefore, the company is not actually insolvent in so far as other liabilities are concerned, the assets are of such a nature, and some of them of such an uncertain value, that they do not afford that protection which should exist in a going concern of this nature, and with the importance of these assets to the class of people to whom they are intended to provide relief and help. These insurance companies must be held to a high order of responsibility by the Commonwealth so that those dependent on them in time of need may not be disappointed. The management of this company in the past short time has not been such as to invite confidence, and while we would have confidence in its affairs when managed by Mr. Gosline, it is almost impossible to bring back to the public a belief in an institution which has been mismanaged as has this one and in which the assets are as uncertain as in this case. We are, therefore, of the opinion that this company is in such condition that its further transaction of business would be hazardous to its policy holders, creditors and the public. The best interest of all will be served by the Insurance Department taking over the assets of the company and liquidating it.

We have referred to the bill in equity filed in the United States District Court, and the restraining order made by Judge Welsh in that proceeding. We are of the opinion that this action on the part of that court does not affect the proceeding before us in any way. This court, a court of the Commonwealth of Pennsylvania, has full, complete and sole authority over the affairs of this corporation, which is chartered under the laws of Pennsylvania, doing business in this State, having its principal office in this State, and being subject to and regulated by the laws of the State. We are of the opinion that the said District Court does not have

the jurisdiction which it has assumed, and that, therefore, the action of this court is not in any way bound or restricted by the proceedings in said District Court. We take this position with all due deference to said court and its learned judge, but with the opinion that in the instant case we alone have power to act in the premises.

Being of the opinion, therefore, that the defendant company is insolvent, and further that its condition is such that its further transaction of business would be hazardous to its policy holders, creditors and the public, we will grant the relief prayed for and make the rule heretofore granted absolute and direct the Insurance Commissioner forthwith to take possession of the property of the said company.

(Sgd.) Watson R. Davison,
President Judge, Thirty-ninth Judicial District. Specially presiding.

[fol. 25] STATEMENT OF QUESTION INVOLVED

A Bill in Equity was filed against an Insurance Company, a Pennsylvania Corporation, in the United States District Court by a non-resident stockholder thereof alleging that by reason of certain acts of mismanagement and misappropriation said corporation was insolvent and that it was unable to continue its business. Said Bill prayed for the appointment of receivers and for a liquidation and winding up of the affairs of said corporation. While said Bill was pending and undetermined and before the appointment of receivers thereunder, the Attorney General filed a suggestion in the Court of Common Pleas of Dauphin County alleging that the said corporation, by reason of various acts of mismanagement and misappropriation, was in such an unsafe and unsound condition that the further transaction of business would be hazardous to its policy holders and creditors. Said Common Pleas Court issued a rule to show cause why the said corporation should not be liquidated under the supervision of the Insurance Commissioner and its charter vacated. After a final hearing on said suggestion and rule, said Court entered a final decree appointing the Insurance Commissioner as Liquidator and vacated the charter of said corporation. In view of the prior pendency of the proceedings in the Federal Court, did the said Common Pleas Court have jurisdiction to enter its decree?

Affirmed.

[fol. 26] IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT, MAY SESSIONS, 1934

No. 28

COMMONWEALTH OF PENNSYLVANIA ex rel. WILLIAM A. SCHNADER, Attorney General,

vs.

PENN GENERAL CASUALTY COMPANY, Appellant

[fol. 27] ASSIGNMENT OF ERROR

The Appellant files the following Assignment of Error:

1. The Court below erred in entering its final decree dissolving the Appellant and vacating its charter; in appoint-

ing the Acting Insurance Commissioner as Liquidator; and in directing that he take possession of the business and property of the Appellant and liquidate its affairs in accordance with the Act of the General Assembly, approved May 17, 1921, P. L. 789.

This Assignment is filed in this form in pursuance of Rule 36. The decree in full is to be found in the record (11a, 12a).

Rawle & Henderson, by Thomas F. Mount, Attorneys for Appellant.

[fol. 28] [Endorsement:] In the Supreme Court of Pa., Middle District. No. 28, May Sessions, 1934. Commonwealth of Pennsylvania, ex Rel. William A. Schnader, Attorney General, vs. Penn General Casualty Company, Appellant. Assignment of Error. Filed in Supreme Court Apr. 5, 1934. Middle District. Rawle & Henderson, Packard Building, Philadelphia.

[fol. 29] In the Supreme Court of Pennsylvania, Middle District, May Term, 1934

No. 28

Commonwealth of Pennsylvania ex rel. William A. Schnader, Attorney General,

v.

Penn General Casualty Company, Appellant

Appeal from Decree of Court of Common Pleas of Dauphin County, No. 343, Commonwealth Docket, 1933

Opinion of the Court

Schaffer, J.:

This case involves a conflict of jurisdictions between the State and Federal Courts in the winding up of the affairs of an insolvent insurance company. The appeal is by the company from the decree of the Court of Common Pleas of Dauphin County making absolute a rule to show cause why the appellant should not be dissolved, its charter vacated and its affairs liquidated by the Insurance Commissioner,

who was directed by the decree forthwith to take possession of the property of the company. The position of appellant is that as a proceeding had been commenced against it in the Federal Court prior to the action in the State tribunal, the latter's jurisdiction was ousted.

Appellant is a Pennsylvania corporation organized under the Insurance Company Law of May 17, 1921, P. L. 682, 40 P. S. sec. 341. It conducted its business under the supervision and regulation of the Insurance Commissioner. On September 14, 1933, pursuant to a citation by the Commissioner, appellant's officers and directors attended a hearing before him, at which the president of the company was ordered to return to it assets he had improperly removed and illegally invested to the serious impairment of its financial stability. On October 14, 1933, a hearing was held before the Attorney General, at which it was established that the further transaction of business by the company would [fol. 30] be hazardous to its policy holders, its creditors and the public. Thereafter negotiations were conducted by the Commissioner with the stockholders of the company in an effort to rehabilitate it and to place it in position to resume business. Pending these negotiations, on November 17, 1933, a resident of West Virginia, claiming to hold four shares of appellant's capital stock, filed in the United States District Court for the Eastern District of Pennsylvania a bill in equity for the appointment of receivers for the company and its liquidation. On December 8, 1933, while that bill was pending, the Attorney General of Pennsylvania filed in the court below his petition averring appellant to be in such condition that its further transaction of business would be detrimental and hazardous to its policy holders, creditors and the public. The same day the court below issued an order enjoining appellant from transacting business and disposing of its property. On December 14, 1933, appellant filed an answer in the District Court proceedings denying that the complainant was a resident of West Virginia and that he was the registered owner of four shares of its stock. On the same date the court below issued a further order restraining appellant from surrendering possession of any of its books or assets to any person other than the Insurance Commissioner. The following day, December 15, 1933, the Federal Court, on the application of complainant's counsel, issued its restraining order of substantially similar import. On December 18, 1933, appellant

filed a denying answer to the petition of the Attorney General and set up the pendency of the bill against it in the Federal Court. Thereafter a hearing was held in the court below at which the Attorney General presented testimony sustaining the allegations of his petition. Appellant offered no defense. Subsequently the court below entered the decree from which this appeal was taken.

The position of appellant is that both courts have concurrent jurisdiction over it and that as the jurisdiction of the Federal Court first attached, its jurisdiction is now ex- [fol. 31] clusive. It furthermore points out that the Act of May 17, 1921, P. L. 789, 40 P. S. sec. 201, does not in terms confer exclusive jurisdiction on the State Court. We think the latter fact of little or no consequence for the reason that if the Federal Court has jurisdiction, its cognizance of the actions could not be ousted by a State statute declaring that its courts have exclusive jurisdiction.

Pennsylvania has provided a most complete system for the regulation and liquidation of insolvent insurance companies and the winding up of their affairs in "The Insurance Department Act of 1921", approved May 17, 1921, P. L. 789, 40 P. S. sec. 1, and "The Insurance Company Law of 1921", approved May 17, 1921, P. L. 682, 40 P. S. sec. 341. Speaking of the former act, we said in Com. v. Equitable Casualty & Surety Co., 306 Pa. 19, that it is a comprehensive statute regulating the business of insurance in the Commonwealth. Section 201 (40 P. S. sec. 41) establishes the insurance department and charges it with the execution of the laws of the Commonwealth in relation to insurance. Section 213 (40 P. S. sec. 51) directs the Commissioner to require every domestic insurance company to keep its books and records in such manner that his representatives may readily verify its annual statements and ascertain whether it has complied with the provisions of the law. The statute requires him to examine each company at least once in three years to ascertain its financial condition, its ability to fulfill its obligations, and its compliance with the provisions of law. Section 502 (40 P. S. sec. 202) provides that whenever any domestic insurance company is insolvent, or has refused to submit its books, &c., to the inspection of the Commissioner, or has neglected or refused to observe an order made by him to make good a deficiency in its capital or transferred its property or merged with another company without the Commissioner's ap-

proval, or if found after examination to be in such condition that its further transaction of business will be hazardous, or has violated its charter or any law of the Common-
[fol. 32] wealth, or whenever any officer has refused to be examined under oath touching its affairs, the Commissioner shall communicate the facts to the Attorney General, who shall after hearing apply to the Court of Common Pleas of Dauphin County or the court of the county in which the principal office is located for an order directing such company to show cause why its business should not be closed and the Commissioner should not take possession of its property and conduct its business and for other relief. Section 507 (40 P. S. sec. 207) provides that if any receiver of an insurance company is appointed on motion of the Attorney General at the instance of the Insurance Commissioner, such receiver shall supersede any receiver previously appointed by the decree of any court of this Commonwealth.

An examination of all the insurance statutes shows that they provide a complete system for the incorporation, management, supervision and liquidation of insurance companies created under the laws of this Commonwealth. In view of this situation and having due regard for the comity which should exist between the Federal and State Courts, it would seem that the former should not take jurisdiction to liquidate and wind up domestic insurance companies when the complete machinery to do so has been set up by the State. At the very time the Federal Court asserted its jurisdiction, the Insurance Commissioner was exercising his full prerogatives over the appellant.

There is and ought to be a wide difference between the jurisdiction of the Federal Courts over the generality of corporations and over those of a quasi-public character where the State creating them, because of their public nature, has provided a complete system for their liquidation by its public officers. If insurance companies are to be liquidated through the Federal Courts, so may State banks and building and loan associations. Such corporations have been differentiated from others in Federal legislation. They are not subject to the Bankruptcy laws. Act of Feb-
[fol. 33] ruary 11, 1932, c. 38, 47 Stat. 4, 11 U. S. C. A. sec. 22.

The only grant of power to the United States which can be invoked to vest jurisdiction in its courts for the liquida-

tion of such corporations as the appellant is Article III, section 2 of the Constitution, which provides: "The judicial power shall extend * * * to controversies * * * between citizens of different states." This language is carried into the Judicial Code (R. S. secs. 563, 629; 28 U. S. C. A. sec. 41). Both Constitution and Code require that there must be a controversy." Under the system of supervisory regulation over insurance companies established by the laws of Pennsylvania there cannot be a controversy in the State courts between a stockholder and an insurance company regarding the liquidation thereof. The power to liquidate insurance companies rests solely in the Insurance Commissioner. A citizen of Pennsylvania cannot, by bringing a bill in equity in a Pennsylvania court against a Pennsylvania insurance company, prevent the Insurance Commissioner from liquidating. If the District Courts of the United States have jurisdiction in cases such as the pending one, a citizen of another state would have rights superior to those of a citizen of Pennsylvania.

As we read the decisions of the Federal Appellate Courts, jurisdiction in situations similar to the present one has been disclaimed by those tribunals. In Port Newark Nat. Bank of Waldron, 56 Fed. (2d) 296, a District Court appointed a receiver to take charge of the affairs of a national bank. The Comptroller of the Currency thereafter appointed a receiver under the provisions of the United States statutes. The Comptroller then appealed from the decree appointing the first receiver. In the course of his opinion reversing the District Court, Judge Buffington of the Circuit Court of Appeals said, page 299: "* * * in the present case we regard the Comptroller at the time this bill was filed as having complete dominion over, and, by his bank examiner, full legal control of, the then and future operations of the bank, and that such situation might ulti- [fol. 34] mately require the appointment of a receiver. Consequently, the court below, when the bill was filed, acquired no jurisdiction to shear the Comptroller of the statutory power to take the further step of appointing a receiver in case insolvency existed and the attempted sale fell through."

In Lyon v. McKeefrey, 171 Fed. 384, the Circuit Court of Appeals for the Third Circuit had before it the question of the jurisdiction of a District Court to appoint receivers and liquidate a Pennsylvania State bank. At page 393,

Judge Gray said: "But the court below has clearly exhausted its jurisdiction, so far as the purposes of the original bill are concerned. That bill did not contemplate a dissolution of the corporation and a winding up of its business, indeed the court was without jurisdiction for that purpose." In that case the bill had been amended after it was originally filed so as to include a prayer for a winding up of the bank and the distribution of its assets. In that connection, the learned judge said, page 393: "But, apart from the propriety of allowing the amendment (a matter largely within the discretion of the court) it is clear that the court could not grant the prayer of the bill as amended." Referring to the nature of the corporation involved and the consequent relationship of the State to it, Judge Gray said: "The defendant corporation was a creature of the laws of Pennsylvania, and by those laws the rules governing its existence were prescribed. The measure of control to be exercised over its own corporations was determinable by the law and policy of the state to which they owed their being. By the legislation here in question, the State of Pennsylvania has seen fit to subject such corporations to supervision and administrative control and has ordained the proceedings, partly administrative and partly judicial, by which the life of such corporations may be determined and their affairs wound up and liquidated. The judicial proceeding is not one that may be instituted by private parties, but by the Attorney General of the State, acting on behalf of the Commonwealth and in the [fol. 35] interest of the public. Such a proceeding is not one of which a United States court can have concurrent jurisdiction. It does not involve a controversy between private parties, whether citizens of the same state or of different states."

In Mitchell v. Lay, 48 Fed. (2d) 79, Judge Wilbur of the Ninth Circuit reversed the District Court and directed a receiver already appointed to turn over the assets of an insurance company to the State Insurance Commissioner as soon as the Commissioner "has secured an appointment as receiver thereof in the action now pending in the State court." In Lee v. Edmunds, 66 Fed. (2d) 122, 125, the Circuit Court of Appeals of the Fifth Circuit said: "The decisions of this Court have agreed with those of the Supreme Court of Florida that only in a clear case of mismanagement will a court of equity take the assets from

the statutory administration. * * * Yet a court of equity in case of necessity may appoint a receiver for special property in the liquidator's hands, but only on a showing of fraud, corruption, or maladministration or other illegal action of the liquidator." In Bank of Bay Biscayne v. Hankins, 42 Fed. (2d) 209, the District Court appointed a receiver to control the assets of an insolvent state bank in place of the State Comptroller of Florida acting under statutory authority. The Circuit Court of Appeals in reversing the District Court's action and remanding the case with directions to dismiss the bill, said at page 210: "Regardless of the terms used, it is apparent that the order in effect appoints a receiver to control the assets of the failed bank, and enjoins the Comptroller from carrying on the liquidation of the institution under the provisions of the laws of Florida. A bank organized under the laws of a State is a quasi-public institution, and, whenever the laws of the State provide for supervision and control of the affairs of the bank by an authorized official, and also for the ultimate liquidation and distribution of its assets under his direction, in the event of its insolvency, it is a matter of grave consequence for any court to inter-[fol. 36] fere. * * * The laws of Florida provide an orderly method of liquidating the affairs of an insolvent State bank, in substantially the same manner that Federal statutes provide for the liquidation of an insolvent national bank. * * * It is usually a matter of discretion to issue an injunction and appoint a receiver, but the exercise of jurisdiction and the entering of the order appealed from in this case appear to us to be unwarranted."

In O'Neil v. Welch, 245 Fed. 261, the Circuit Court of Appeals of the Third Circuit had for consideration Pennsylvania's right to administer the affairs of the insurance companies through its Insurance Commissioner. The Commissioner through the Attorney General had proceeded in the State court under the State statute against a Pennsylvania insurance company. Thereafter, a nonresident stockholder filed a bill in the District Court, alleging insolvency and asking for the appointment of a receiver. The defendant company filed a consent answer. The day before the proceedings in the State court came to a hearing upon a rule theretofore granted, the District Court appointed a receiver. The Attorney General thereupon filed a petition in that court to vacate the appointment. The District

Court dismissed the petition and on appeal the Circuit Court of Appeals reversed. Judge Woolley, in writing the opinion, said at page 267: "The State engaged in this undertaking primarily for the protection of the public. Being for the public, its action is a governmental function. When in its exercise it becomes necessary to protect the public from insolvent or improperly conducted insurance companies, the State pursues a remedy prescribed by the same law that conferred the corporation's rights and defined the State's duties. Given briefly, the Insurance Commissioner, acting through the Attorney General, filed in a State court a suggestion of the corporation's insolvency or unlawful conduct. In this way the State acts and in this way the State begins suit. Upon the State's suggestion the court starts a judicial inquiry by directing to the insurance company a rule to show cause why the Insurance Commissioner should not take possession of its property, and at [fol. 37] the same time (that is at the very beginning of the suit) the court, if it wishes, lays its hand upon the company's property, and by a restraining order holds it within its control pending the inquiry. The jurisdiction of the State court thus invoked is a special jurisdiction conferred by statute as a part of the State's policy of insurance regulation and control. It is not conferred for the protection of corporations' policyholders and creditors alone, but for the protection of the public as well. This clearly appears by the terms of the act; it again appears in the court's decree. In prosecuting an insurance company the State is acting for the public, and the public is in turn interested in the proceeding; though not nominally present as a party it is nevertheless present in the person of the Attorney General."

In Shapiro v. Wilgus, 287 U. S. 348, where the receivership was obtained by a filing of a consent decree, the Supreme Court of the United States gave warning against the abuse of the practice of appointing Federal receivers upon a consent answer, where the application is predicated on diversity of citizenship. The court said, page 356: "We have given warning more than once, however, that the remedy in such circumstances is not to be granted loosely, but is to be watched with jealous eyes. * * * Never is such a remedy available when it is a mere weapon of coercion, a means for the frustration of the public policy of the state or the locality." The filing of the bill in this case

by the alleged stockholder of the company in the Federal Court was an obvious effort to frustrate the public policy of Pennsylvania.

Believing as we do that the Federal Court was without jurisdiction and that the action of the court below was proper, we affirm the decree at appellant's cost.

[fol. 38] [Endorsement:] # 215. In the Supreme Court of Pennsylvania, Middle District. No. 28, May Term, 1934. Commonwealth of Pennsylvania, ex rel. William A. Schnader, Attorney General, v. Penn General Casualty Company, Appellant. Appeal from Decree of Court of of Common Pleas of Dauphin County. Argued April 23, 1934. Decree affirmed at appellant's cost. Schaffer, J. Filed in Supreme Court, Jun. 30, 1934. Philadelphia.

[fol. 39] In the Supreme Court of Pennsylvania, Middle District, May Term, 1934

No. 28

Commonwealth of Pennsylvania, ex rel. William A. Schnader, Attorney General,

vs.

Penn General Casualty Company, Appellant

Motion for Re-argument

The appellant, Penn General Casualty Company, by its attorneys, Rawle & Henderson, respectfully moves for a re-argument of the above entitled case, and assigns the following reasons:

I. We submit that your Honorable Court, in deciding that the Federal Court had no jurisdiction of the suit brought by Lando against the appellant, has misconstrued Article III, Section 2 of the Constitution of the United States and the Judicial Code (28 U. S. C. A. 41) which fix the jurisdiction of the District Courts of the United States.

The jurisdiction of the Federal Courts, as defined by the above section of the Code, is as follows:

"The district courts shall have original jurisdiction as follows: * * *

"First. Of all suits of a civil nature at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and * * * is between citizens of different states * * *" (Appellant's Brief, p. 12.)

[fol. 40] The construction placed upon the above-quoted section of the Code by your Honorable Court is as follows:

"Both Constitution and Code require that there must be a 'controversy.' Under the system of supervisory regulation over insurance companies established by the laws of Pennsylvania there cannot be a controversy in the State courts between a stockholder and an insurance company regarding the liquidation thereof. The power to liquidate insurance companies rests solely in the Insurance Commissioner. A citizen of Pennsylvania cannot, by bringing a bill in equity in a Pennsylvania court against a Pennsylvania insurance company, prevent the Insurance Commissioner from liquidating. If the District Courts of the United States have jurisdiction in cases such as the pending one, a citizen of another state would have rights superior to those of a citizen of Pennsylvania." (See page 5 of the Opinion, submitted herewith as Exhibit "A".)

We submit that this construction is erroneous for the reason that the provision of the Code above-quoted confers jurisdiction upon the District Courts "of all suits of a civil nature at common law or in equity".

As was pointed out in the appellant's brief, (p. 12):

"The proceeding in the Federal Court with which we are concerned is a suit of a civil nature. It has been brought in equity and there is a compliance with the statutory requirements as to the amount involved and diversity of citizenship."

As we understand the decision of your Honorable Court in this case, it is held that the United States District Court does not have jurisdiction as the suit in the Dauphin County Court is not a "controversy" within the meaning of the Constitution and the Code, for the reason that no citizen of Pennsylvania could bring an action to liquidate a Penn-

sylvania insurance company. We have found no case which so limits the jurisdiction of the District Courts. The Code in terms does not qualify the type of suit which may be brought, other than that it shall be of a civil nature.

[fol. 41] We submit that the proceeding taken at the instance of the Attorney General in this matter was a "suit of a civil nature". The filing of the rule to show cause by the Attorney General was the commencement of the suit, as is pointed out in the case of O'Neil v. Welch, 245 Fed. 261, which is quoted on pages 8 and 9 of the Opinion of your Honorable Court (Exhibit "A" hereto).

Further, we respectfully submit that your Honorable Court fell into error in stating that "there cannot be a controversy in the State Courts between a stockholder and an insurance company regarding the liquidation thereof". We find no provision in the Insurance Department Act of 1921 and the Insurance Law of 1921 which specifically states that the Insurance Commissioner shall be the sole person who may move for the liquidation of an insurance company, nor do we find any provision to the effect that a stockholder may not move for the appointment of a Receiver for such purpose.

We submit, as argued in appellant's brief on pages 7, 8, and 9, that an insurance company may be liquidated in a suit instituted in the Courts of the Commonwealth at the instance of a private litigant. This conclusion is supported by the Act of May 17, 1921, P. L. 789 (40 P. S., Sections 207, 208) which provide that Receivers otherwise theretofore appointed may be superseded by the intervention of the Attorney General, and if no intervention occurs, there is nothing that we find in the Act which prevents such Receivership being prosecuted to final conclusion. We do not agree, therefore, with the following statement on page 5 of the Opinion of your Honorable Court:

"If the District Courts of the United States have jurisdiction in cases such as the pending one, a citizen of another state would have rights superior to those of a citizen of Pennsylvania."

We submit, therefore, that the interpretation placed upon [fol. 42] the Judicial Code by your Honorable Court is contrary to its explicit terms giving jurisdiction to the United

States District Courts "of all suits of a civil nature at common law or in equity".

II. If your Honorable Court relies upon the Federal cases cited in support of its interpretation, we desire to point out that in our opinion they are not decisive of the question under consideration.

In Port Newark National Bank of Waldron, 53 Fed. (2d) 296, the point under consideration was not a conflict of jurisdiction of two different sets of Courts, but, as we see it, rather a question of distribution of Federal power.

In Lyon v. McKeefrey, 171 Fed. 384, the Federal Court did take jurisdiction and appoint Receivers, and permitted its Receivership to continue to the point of a distribution of the balance on hand to stockholders after all of its other business had been wound up and terminated, even though prior to the end of the Federal Receivership the corporation had been dissolved by order of the State Court.

In Mitchell v. Lay, 48 Fed. (2d) 79, the question involved was whether a Federal Court could take assets deposited by a foreign insurance company which were in effect a qualifying bond for a foreign insurance company to do business in the State of California. The question there involved was whether the Federal Court could direct the Insurance Commissioner to apply such funds contrary to the terms of the Statute under which he held the same.

In Bank of Bay Biscayne v. Rankins, 42 Fed. (2d) 209, the Court, as we understand its opinion, decided that the circumstances did not warrant its intervention. It seems to us that the Court impliedly recognized the fact that it [fol. 43] had jurisdiction which it could exercise if it saw fit so to do.

In O'Neil v. Welch, 245 Fed. 261, the Court specifically held:

"It cannot be doubted that the Federal Court, in the exercise of its general equity jurisdiction, has power to appoint a Receiver on a stockholder's bill, determine the corporation's solvency, and distribute its assets, and that no State statute can impair or destroy that power."

As we understand that decision, the Federal Court refused to take jurisdiction only for the reason that the Attorney General filed his Suggestion in the State Court prior to the filing of the Bill in the Federal Court.

On the question of priority jurisdiction, we again respectfully refer your Honorable Court to Mitchell v. Maurer and International Re-Insurance Corporation, 69 F. (2d) 233.

By reason of the foregoing matters, we respectfully request that your Honorable Court grant a re-argument of this case.

Respectfully submitted, Rawle & Henderson, by Joseph W. Henderson, Thomas F. Mount.

[fol. 44] [Endorsement:] In the Supreme Court of Pennsylvania, Middle District. No. 28, May Term, 1934. Commonwealth of Pennsylvania ex rel. William A. Schnader, Attorney General, vs. Penn General Casualty Company, Appellant. Motion for Re-Argument. Rawle & Henderson, Packard Building, Philadelphia. Filed in Supreme Court, Jul. 10, 1934, Middle District.

[fol. 45] COMMONWEALTH OF PENNSYLVANIA,
County of Dauphin, Sct:

I, Homer Hummel Strickler, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Middle District thereof, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct Copy of the whole and entire printed record and other papers before the Supreme Court, as per Request of Counsel in the case of Commonwealth of Pennsylvania ex rel. William A. Schnader, Attorney General, vs. Penn General Casualty Company, Appellant, at No. 28, of May Term, 1934, as full, entire and complete as the same remains on file in the said Supreme Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof, as requested by Counsel.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court at Harrisburg, in the County of Dauphin, in the said Middle District of Pennsyl-

vania, this 15th day of August in the year of our Lord One Thousand Nine Hundred and Thirty-four.

Homer Hummel Strickler, Deputy Prothonotary.
(Seal of the Supreme Court of Pennsylvania, Middle District.)

[Endorsed:] No. 28, May Term, 1934. Commonwealth of Pennsylvania ex rel. William A. Schnader, Attorney General, vs. Penn General Casualty Company, Appellant. Certificate.

[fol. 46] IN THE SUPREME COURT OF PENNSYLVANIA IN AND FOR THE MIDDLE DISTRICT, MAY TERM, 1934

No. 28

COMMONWEALTH OF PENNSYLVANIA ex Rel. William A. Schnader, Attorney General,

vs.

PENN GENERAL CASUALTY COMPANY, Appellant

Appeal from the Court of Common Pleas for the County of Dauphin, No. 343, Commonwealth Docket, 1933

ADDITIONAL DOCKET ENTRIES

* * * * * * *

Jul. 10, 1934.—Motion for re-argument filed.

Sep. 10, 1934.—Re-argument refused. Per Curiam.

Sep. 11, 1934.—Petition for stay of enforcement of decree filed.

Sep. 11, 1934.—Acceptance of service thereof filed.

Sep. 11, 1934.—Answer filed.

Sep. 11, 1934.—Petition to have record retained by Prothonotary filed.

True copy from the record.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court, at Harrisburg this 12th day of September, A. D. 1934.

Homer Hummel Strickler, Deputy Prothonotary.
(Seal of the Supreme Court of Pennsylvania, Middle District.)

[Endorsed:] No. 28, May Term, 1934. Supreme Court. Com. of Pa. ex rel., etc., vs. Penn General Casualty Co., Appellant. Additional Docket Entries.

[fol. 41] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 22, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.